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7 [Proposed] Attorneys for Fili Enterprises, Inc., d/b/a
 8 Daphne's Greek Cafe, a California corporation,
 Debtor and Debtor-in-Possession

9
 10 UNITED STATES BANKRUPTCY COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 In re:

13 FILI ENTERPRISES, INC., d/b/a Daphne's
 14 Greek Cafe, a California corporation,
 15 Debtor.

CASE NO. 10-bk-00324-PB

Chapter 11

**DECLARATION OF GEORGE
 KATAKALIDIS IN SUPPORT OF FIRST
 DAY MOTIONS**

16 Date: TBD
 17 Time: TBD
 Place: Room 328
 18 Judge: The Hon. Peter W. Bowie

1 I, GEORGE KATAKALIDIS, declare as follows:

2 1. I am the founder of Fili Enterprises, Incorporated, d/b/a Daphne's Greek Cafe ("Fili" or
 3 the "Debtor"). I serve as the Debtor's President, Chief Executive Officer and Chairman of the Board of
 4 Directors. In this capacity, I am generally familiar with the day-to-day operations, business and financial
 5 affairs of the Debtor. I submit this Declaration in support of the Debtor's chapter 11 petition and "first-
 6 day" relief that the Debtor has requested in the first day motions ("First Day Motions") identified below
 7 and to assist the Court and other interested parties to understand the circumstances that compelled the
 8 commencement of this Chapter 11 case (the "Case").

9 2. Except as otherwise stated, all facts contained within this Declaration are based on my
 10 personal knowledge, my discussions with other members of the Debtor's management, my review of
 11 relevant documents, and/or my opinion, relying on my experience in the industry and knowledge of the
 12 Debtor's operations and finances. If I were called upon to testify, I could and would competently
 13 testify to the matters set forth herein. I am authorized to submit this Declaration on behalf of the
 14 Debtor.

15 3. On January 11, 2010 (the "Petition Date"), the Debtor filed a voluntary petition
 16 ("Petition") for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy
 17 Code"). The Debtor continues to operate its business and manage its affairs as a debtor in
 18 possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

19 4. As President and Chief Executive Officer, I oversee and direct all of the
 20 Debtor's business operations, including, but not limited to, financial planning, financial
 21 reporting, and cash management activities, and I have been actively involved in developing
 22 and implementing the Debtor's business strategies. I have reviewed and worked extensively
 23 with the Debtor's books and records, including the Debtor's financial statements and projections,
 24 business plans, analyses, reports, insurance policies, leases, other legal documents, notes,
 25 correspondence, and the like. On a daily basis, I witness and/or participate in negotiations with
 26 lenders, vendors, and customers of the Debtor, and I work closely with personnel from all aspects
 27 of the Debtor's operations. Based upon all of the foregoing, I have developed an intimate
 28 familiarity with the Debtor's books and records, operational and financial details, business and

1 financial history, and current business and financial situation, and with the restaurant industry
 2 generally.

3 5. After the filing of the Petition, the Debtor filed (concurrently with this
 4 Declaration), the following Motions:

- 5 a. First Day Motion By Debtor For Order Limiting Scope Of Notice;
- 6 b. First Day Motion By Debtor For Order (A) Authorizing Continued Use
 Of Debtor's Cash Management System, (B) Authorizing Maintenance And Continued
 Use Of Debtor's Existing Bank Accounts, (C) Authorizing Continued Use Of Debtor's
 Business Forms, (D) Authorizing A Waiver Of Section 345(b) Deposit And Bond
 Requirements, And (E) Directing Banks And Financial Institutions To Honor And
 Process Prepetition Checks And Transfers;
- 12 c. First Day Motion by Debtor for Order (A) Authorizing Interim Use of Cash
 Collateral, (B) Granting Adequate Protection for Use of Prepetition Collateral, and (C)
 Granting Related Relief;
- 15 d. First Day Motion by Debtor for Order (A) Prohibiting Utility Providers
 from Altering, Refusing or Discontinuing Service, (B) Deeming Utility Companies
 Adequately Assured of Future Performance, and (C) Establishing Procedures for
 Determining Adequate Assurance of Payment;
- 19 e. First Day Motion by Debtor for Order: (1) Authorizing, but not Requiring,
 Payment of Pre-Petition (A) Wages, Salaries and Other Compensation; (B) Employee
 Benefits; (C) Reimbursable Expenses; (D) Related Taxes; and (2) Authorizing and
 Directing Financial Institutions to Receive, Process, Honor, and Pay All Checks
 Presented for Payment;
- 24 f. First Day Motion by Debtor for Order Pursuant to Sections 507(a)(2) and
 503(b) Confirming Grant of Administrative Expense Status to Undisputed Obligations
 Arising from the Postpetition Delivery of Goods;
- 27 g. First Day Motion By Debtor For Order Authorizing Debtor To Pay
 Interim Compensation To Insiders;

h. First Day Motion by Debtor for Order (A) Authorizing the Debtor to Pay Prepetition Insurance Premiums, and (B) Directing Banks and Financial Institutions to Honor and Process Checks and Transfers Related to the Payment of These Obligations;

i. First Day Motion by Debtor for Order Authorizing the Debtor to Honor Certain Prepetition Obligations to Customers and to Otherwise Continue Customer Programs and Practices; and

j. Motion by Debtor for Entry of Final Order Pursuant to Sections 105, 361, 362, 364(c) and 364(d) (A) Authorizing the Debtor to Incur Postpetition Financing on a Secured Basis, (B) Granting Adequate Protection, and (C) Modifying the Automatic Stay. (This Motion shall be heard on regular notice).

6. In addition, the Debtor plans to file shortly after the Petition Date applications to employ various professionals, including, but not limited to: (a) an application to employ DLA Piper LLP (US) as bankruptcy counsel *nunc pro tunc* as of the Petition Date; (b) an application to employ CRG Partners as financial advisors *nunc pro tunc* as of the Petition Date; (c) an application to employ North Point Advisors LLP as investment bankers *nunc pro tunc* as of the Petition Date; and (d) Retail Resource Group as leasing specialists.

7. This Declaration is divided into three parts: Part I of this Declaration provides an overview of the Debtor's business, organizational and liability structure; Part II provides a discussion of the Debtor's financial performance and the events that compelled the commencement of the Case, and the Debtor's restructuring goals; and Part III sets forth the relevant facts in support of the First Day Motions (and the DIP Financing Motion).

I. BACKGROUND OF THE DEBTOR'S BUSINESS

A. The Fili Business

8. In 1988, I founded Fili, to produce affordable and great tasting Greek food in a fast casual environment. I have been the Chief Executive Officer of Fili since its inception. Prior to 1988, I was a professional soccer player with the New York Arrows, San Jose Earthquakes, and finally with the San Diego Sockers. While I was playing professional soccer, I began researching

1 and developing ideas on the food business and realized that there was an opportunity for high
 2 quality Greek cuisine at reasonable prices. When I was ultimately forced to retire from soccer due
 3 to injury, I started Fili with one small unit in the Sorrento Valley area of San Diego County.

4 9. Fili currently does business under the trade names of Daphne's Greek Express
 5 and Daphne's Greek Café ("Daphne's").

6 10. I am an active member of my industry, a recognized expert on the fast casual
 7 segment, and a frequent contributor and speaker to various restaurant related conferences,
 8 publications, and working groups throughout the United States. My extensive and successful
 9 leadership skills make me uniquely suited to carry out my primary duties as the Debtor's
 10 President and Chief Executive Officer.

11 11. Currently, the Debtor designs, develops, builds, owns, and operates restaurant
 12 facilities, in California, Arizona, Washington, and Colorado. Daphne's is the largest national
 13 chain of Greek restaurants in the country. Daphne's appeals to those looking for a fresh healthy
 14 dining experience by featuring fresh carved gyros, fresh grilled pita bread, grilled chicken and
 15 steak kabobs and fresh roasted chicken. Daphne's was one of the first in its industry to feature a
 16 completely zero trans fat menu. In addition, Daphne's caters to the budget conscious consumer
 17 by offering a range of one dollar add-ons such as the Hummus & Grilled Pita Starter, roasted
 18 Red Pepper Hummus & Grilled Pita Starter, Lemon Chicken Soup and Baklava.

19 12. Over the last ten years, Daphne's has received numerous accolades from a
 20 variety of industry and local publications. Daphne's has been named a "mover and shaker" in
 21 our segment and "one to watch" in many restaurant publications. In addition, Daphne's has
 22 achieved numerous, "Best Of...." titles in many of the communities in which we operate.

23 13. The Debtor, headquartered in San Diego, California, employs 1,034 people. As
 24 of the Petition Date, the Debtor is operating out of 67 leased locations with the largest
 25 concentration of restaurants in Southern California. Additional information about the Debtor and
 26 its history can be found at www.daphnesgreekcafe.com.

27 **B. The Debtor's Management Team**

28 14. As stated above, I am the President and Chief Executive Officer. Anne Geiling is

1 the Senior Director of Marketing, Greg Hernandez is Vice President of Operations and Ricardo
 2 Camberos is the Director of Accounting.

3 15. In January, 2009, at the request of our senior secured lender, the Debtor retained
 4 the services of CRG Partners (“CRG”), a management consulting firm focused on advising and
 5 assisting financially and operationally troubled companies. The firm consists of seasoned
 6 professionals with over 30 years of combined turnaround, restructuring, and crisis management
 7 experience. Specifically, Gene Baldwin, a partner of CRG, who has been acting as the Debtor’s
 8 primary financial advisor, is assisting the Debtor with (among other things) cash flow
 9 forecasting, identification and implementation of cost reduction initiatives, store closure analysis
 10 and in the management and completion of the reorganization process in the Case. As set forth
 11 above, the Debtor is filing an application to employ CRG as its financial advisor.

12 **C. Corporate Structure and Ownership**

13 16. The Debtor is a privately held corporation. I own 100% of the outstanding shares
 14 of stock.

15 **D. The Debtor’s Recent Financial History**

16 17. The Debtor enjoyed uninterrupted revenue growth until the fourth quarter of
 17 2007. Over the past two years, sales have decreased 12% and the Debtor’s net income from
 18 operations declined from -\$165,000 to -\$571,000. Revenue has continued to decline throughout
 19 2009. The continuous and significant decline in revenue has made it impossible for the Debtor
 20 to meet its operational expenses, including its real property lease obligations.

21 **E. Asset and Debt Structure**

22 **1. Current Assets**

23 18. The Debtor’s revenue is generated primarily from its restaurant operations. As of
 24 November 30, 2009, the Debtor had current assets with an estimated value of \$2,899,273,
 25 including \$1,296,867 of cash on hand. As of November 30, 2009, Debtor’s total assets have an
 26 estimated value of \$17,080,780 which includes property, equipment and deposits.

27 **2. Secured Debt**

28 19. On or about February 1, 2005, the Debtor and Fleet National Bank, Bank of

1 America's predecessor in interest, entered into a Credit Agreement (as amended from time to
 2 time, and together with all ancillary documents, the "Credit Agreement") pursuant to which the
 3 lender agreed to make certain loans and letter of credit extensions to the Debtor (the "Loan").
 4 The Loan provided the Debtor with funds to build and operate multiple restaurants
 5 throughout the western United States. The Loan is secured by a lien and security interest on
 6 substantially all of the Debtor's assets in favor of Bank of America. As will be discussed in
 7 detail below, prior to the Debtor's default, the Debtor had a credit facility of \$16,500,000 of
 8 which \$3,500,000 was available. As of November 30, 2009, the outstanding balance under the
 9 Loan was \$12,881,240.18.

10 **3. Unsecured Debt**

11 20. As of the Petition Date, the Debtor has approximately \$3.7 million of priority and
 12 general unsecured obligations that are held by approximately 1,240 creditors, including
 13 employees.

14 21. The Debtor has paid employees wages and benefits through December 27, 2009.
 15 The Debtor's next payroll is due to its payroll service (as defined below) no later than January
 16 14, 2010, and the Debtor, pursuant to the first day Wage Motion (defined below), is seeking
 17 authority to pay, in the ordinary course of business, its employees all wages earned but unpaid
 18 prior to the Petition Date, which amounts to approximately \$550,000. Further, through its Wage
 19 Motion, the Debtor is seeking the authority to honor all of its other employee benefit programs in
 20 the ordinary course of business.

21 22. I believe that the Debtor's underlying business strategy is sound. The advantages of
 22 our management team, infrastructure, core restaurants and network and distribution have allowed us
 23 to be a strong restaurant business that enables us to deliver the highest quality food products at
 24 reasonable prices. I believe that once our debt structure is leveraged to address operating
 25 challenges caused by the current economic conditions, and we focus on our best operated and
 26 most profitable restaurants, we will be able to perform as a successful going concern.

27

28

1 **II. RECENT FINANCIAL PERFORMANCE AND EVENTS LEADING TO**
 2 **THE CHAPTER 11 FILINGS**

3 23. Given the well known decline of the economy throughout 2008, sales of ethnic
 4 restaurants slumped. This slump had and continues to have a severe impact on the Debtor's
 5 operating income. Same store sales dipped from -8.25% in June 2008 to -13% in August 2008
 6 and have remained negative through the Petition Date. In addition, construction costs for the
 7 opening of 5 new stores in 2009 were accelerated to the first quarter of 2009 impacting cash flow
 8 by approximately \$2,200,000. We also had new leases signed for opening in 2008. Nevertheless,
 9 out of the five signed leases in 2008, only one store opened. In September of 2008, the Debtor
 10 communicated to Bank of America that the fixed charge covenant required for August 2008 had
 11 not been met. Later, in the Fall of 2008, Bank of America denied the Debtor's request to draw
 12 \$1,000,000 from its credit line (and reduced the credit facility to the actual outstanding debt,
 13 eliminating the entire \$3.5 of available credit). Consequently, on or about December 19, 2008, I
 14 funded a \$400,000 loan to the Debtor so that it could make payroll.

15 24. By letter dated February 9, 2009, Bank of America reserved all rights and declared
 16 events of default for the Debtor's failure to comply with its financial covenant obligations under
 17 the Credit Agreement. On March 2 and March 30, 2009, Bank of America and Debtor entered
 18 into two forbearance agreements, the last of which period ended on July 31, 2009 ("Forbearance
 19 Agreements"). Nevertheless, from September 1, 2008 and until November 1, 2009, the Debtor
 20 continued to service its interest payments to Bank of America at the default rate of Prime plus 2
 21 (400 punitive basis points were imposed). As stated above, in connection with the Forbearance
 22 Agreements, Bank of America revoked the Debtor's access to its credit line which it had relied on
 23 to fund operating costs when the seasonal dips inherent in the restaurant business impacted cash
 24 flow.

25 25. Prior to filing the Case, the Debtor, with the assistance of CRG, implemented
 26 an informal restructuring plan designed to eliminate some of its financial burden. This pre-
 27 filing restructuring included renegotiating rents with certain landlords saving the Debtor in
 28 excess of \$1,000,000; terminating 4 corporate level employees and generally reducing

1 overhead by more than \$1,000,000, negotiating payment plans with contractors on
 2 restaurants under construction, and implementing a successful marketing plan. In addition,
 3 in the weeks prior to the Petition Date, the Debtor closed 14 stores and terminated 87
 4 employees.

5 26. These restructuring efforts have not been enough to facilitate an out of court
 6 restructuring with Bank of America, despite best efforts on everyone's part.¹ The lack of
 7 access to a credit facility to fund operating costs caused by declining revenue and the
 8 continued decline of the economy has put extreme pressure on the Debtor's business making
 9 it necessary to seek protection under chapter 11 of the Bankruptcy Code.

10 27. Bank of America and the Debtor have been negotiating regarding the Debtor's use
 11 of Bank of America's cash collateral. As of the Petition Date, Bank of America has not
 12 consented to cash collateral use and as a result the Debtor is seeking this Court's approval of the
 13 use of cash collateral. The Debtor will continue its efforts to reach a cash collateral stipulation
 14 with Bank of America.

15 28. The Debtor believes that the bankruptcy filing is necessary to provide it the time
 16 it needs to continue implementing its prepetition restructuring strategy to reorganize its business
 17 around its strongest performing locations and eliminate burdensome and unprofitable locations.
 18 The Debtor intends to develop and implement a consensual plan of reorganization on an
 19 expedited basis.

20 29. In anticipation of this case, and with the assistance of CRG, the Debtor has
 21 developed cash flow projections reflecting anticipated revenue and expenditures through the week
 22 ending April 25, 2010 as set forth in the proposed cash collateral and operating budget (the
 23 "Budget") attached hereto as Exhibit "A." The projected cash inflow results primarily from
 24 operating income, while the outflows consist of payroll, costs of goods sold, rent, other overhead
 25

26 ¹ In addition to the Credit Agreement, Bank of America and the Debtor are parties to an ISDA Master Agreement
 27 and Schedule, dated March 8, 2007 ("Master Swap Agreement"), which gave rise to an Interest Rate Swap
 28 Transaction on March 14, 2007 ("Swap Transaction"). By letters dated December 22, 28, and 30, Bank of America
 declared the Debtor in default under the Master Swap Agreement for failure to make two payments totaling
 \$62,966.33. As a result of the Debtor's defaults, Bank of America terminated the Swap Transaction effective
 December 30, 2009.

expenses and certain reserves for professionals, among other expenses. The Budget takes into account the effect this bankruptcy filing may have on its business and Debtor's cost cutting measures identified above.

4 30. In addition to requiring the use of cash collateral, the Debtor believes it is
5 necessary to obtain Court approval for postpetition financing to maintain the liquidity it needs to
6 enable it to operate its business and permit it a sufficient opportunity to reorganize its affairs.
7 This postpetition financing will be available to the Debtor on a revolving basis to cover cash
8 shortfalls, if any. Subject to court approval, GPG Capital, LLC has agreed to provide the Debtor
9 with a \$1,000,000 revolving credit facility on a senior secured super-priority basis. The motion
10 to approve postpetition financing has been filed concurrently with this Declaration and will be
11 heard on regular notice.

III. FIRST DAY MOTIONS

4 31. As stated above, I believe the Motions will facilitate the Debtor's transition into
the Case. The First Day Motions are discussed below.

16 32. **First Day Motion by Debtor for Order Limited Scope of Notice:** By this
17 motion (“Motion to Limit Notice”), the Debtor seeks authority pursuant to Rules 1007(d),
18 2002 (i), 2002(m), 4001, 6004, 6006, 9006, 9007, 9013, 9014 and 9019 of the Federal Rules of
19 Bankruptcy Procedure (the “Bankruptcy Rules”), an order authorizing the Debtor to limit notice of
20 the following Limited Notice Matters (as defined below) in this Case to the following parties: (1)
21 the Office of the United States Trustee; (2) the creditors appearing on the list filed in accordance
22 with Bankruptcy Rule 1007(d); (3) any creditors asserting secured claims; (4) parties that file with
23 the Court and serve upon the Debtor request for notice of all matters in accordance with Bankruptcy
24 Rule 2002; and (5) any party with a specific pecuniary interest in the particular Motion. If the
25 relief requested in the Motion to Limit Notice is granted, the burden, complication, delay and
26 cost to the Debtor’s estate that is associated with administering this Case and providing notice of
the proceedings in this Case to many thousands of parties would be dramatically reduced.

33. The Debtor's creditor matrix in this Case contains more than 4,200 creditors

1 and other interested parties. Further, the Debtor has approximately \$284,770 of outstanding
 2 gift cards and has no knowledge of the names of the parties holding those cards nor ready
 3 means by which to obtain them. The Debtor anticipates numerous creditors may make
 4 claims against the estate. Requiring notice to and service upon all of these parties would
 5 substantially increase the cost of administering the estate without conferring any meaningful
 6 benefit on the estate. The Debtor submits that the limited scope of notice proposed herein is
 7 necessary to avoid the administrative burdens and costs that serving notice of all pleadings in
 8 these parties would impose upon the Debtor while assuring that the interested parties in this
 9 Case receive proper and sufficient notice of all matters.

10 34. The Debtor requests that the Court limit the scope of all notices, motions, or
 11 applications, including, but not limited to, the following matters (the “Limited Notice Matters”):

- 12 a) any proposed use, sale or lease of property of the estate other than in the
 ordinary course of business pursuant to section 363 of the Bankruptcy Code
 and Bankruptcy Rules 2002(a)(2), 4001(b) and 6004;
- 14 b) any proposed assumption, rejection or assumption and assignment of an
 executory contract or unexpired lease pursuant to section 365 of the
 Bankruptcy Code or Bankruptcy Rule 6006(a) or (c);
- 16 c) any proposed extension of the Debtor’s exclusive time to file a plan of
 reorganization and solicit acceptance thereof (including, without limitation,
 the time to file a disclosure statement) pursuant to section 1121 of the
 Bankruptcy Code or Bankruptcy Rule 3016;
- 18 d) any proposed approval or compromise or settlement of a controversy
 pursuant to Bankruptcy Rules 2002(a)(3) and 9019;
- 20 e) any proposed abandonment or disposition of property of the estate and the
 hearing, if any, thereon, pursuant to section 554 of the Bankruptcy Code or
 Bankruptcy Rule 6007(a) or (c);
- 22 f) any proposed modification of the automatic stay pursuant to section 362 of
 the Bankruptcy Code or Bankruptcy Rules 4001(a) or 9014;
- 23 g) any proposal to prohibit or condition the use, sale or lease of property
 pursuant to section 363 of the Bankruptcy Code or Bankruptcy Rule 4001
 (a);
- 25 h) any proposal to obtain credit on a secured basis or out of the ordinary course
 of business or grant a lien pursuant to section 364 of the Bankruptcy Code or
 Bankruptcy Rule 4001(b) or (c);
- 27 i) any proposed agreement relating to relief from the automatic stay,
 prohibiting or conditioning the use, sale or lease of property, providing
 adequate protection, use of cash collateral and obtaining credit pursuant to

- sections 361, 362, 363, or 364 of the Bankruptcy Code or Bankruptcy Rule 4001(d);
- j) any proposed application for employment of professionals pursuant to sections 327, 1103, and/or 1104 of the Bankruptcy Code or Bankruptcy Rule 2014;
 - k) any proposed application for compensation or reimbursement of expenses of professionals, pursuant to sections 328, 329, 330, or 331 of the Bankruptcy Code or Bankruptcy Rules 2002(a)(6), 2016, 2017 and 6005 and compensation to debtors' insiders pursuant to Local Bankruptcy Rule 4002-2;
 - l) any verified statement filed by any entity or committee (other than those appointed pursuant to section 1102 and 1104 of the Bankruptcy Code) representing more than one creditor pursuant to Bankruptcy Rule 2019(a) and any motion filed in respect thereof pursuant to Bankruptcy Rule 2019(b);
 - m) any proposed objections to claims pursuant to section 502 of the Bankruptcy Code or Bankruptcy Rule 3012;
 - n) any proposed reconsideration of claims pursuant to Bankruptcy Rule 3008;
 - o) any proposed valuation of security pursuant to section 506 of the Bankruptcy Code or Bankruptcy Rule 3012;
 - p) any proposed redemption of property from lien or sale pursuant to Bankruptcy Rule 6008; and
 - q) any hearing on any contested matter in this case that requires notice to creditors pursuant to the Bankruptcy Code, Bankruptcy Rule 9014 or the Local Rules.

35. Notwithstanding the foregoing, the Debtor is prepared to provide notice to all creditors and interested parties of hearings on its proposed disclosure statement and plan of reorganization, and other actions requiring notice as described in Bankruptcy Rules 2002(a)(4), (5), (7), and (8).

36. As set forth above, the Debtor's creditor matrix contains more than 4,200 creditors and interested parties. The expense of serving duplicates of even the initial motions necessary in this case places a substantial burden upon the estate without conferring any substantial benefit. This Motion to Limit Notice seeks to fulfill the objectives of chapter 11: successfully rehabilitating the Debtor, and maximizing the value of the Debtor's estate. Any undue delay could greatly impact the efficiency at which these objectives are accomplished, or stymie these objectives altogether. Based on this need for immediate approval, the Debtor respectfully submits that the relief requested

1 by the Motion to Limit Notice be granted on an emergency basis.

2 37. **First Day Motion by Debtor for Order (A) Authorizing Continued Use Of**
 3 **Debtor's Cash Management System, (B) Authorizing Maintenance And Continued Use Of**
 4 **Debtor's Existing Bank Accounts, (C) Authorizing Continued Use Of Debtor's Business**
 5 **Forms, (D) Authorizing A Waiver Of Section 345(b) Deposit And Bond Requirements, And (E)**
 6 **Directing Banks And Financial Institutions To Honor And Process Prepetition Checks And**
 7 **Transfers:** By this motion (the "Cash Management Motion"), the Debtor is seeking an order (a)
 8 authorizing continued use of Debtor's cash management system, (b) authorizing maintenance and
 9 continued use of Debtor's existing bank accounts, (c) authorizing continued use of Debtor's
 10 business forms, (d) authorizing a waiver of section 345(b) deposit and bond requirements, and (e)
 11 directing banks and financial institutions to honor and process prepetition checks and transfers.

12 38. **The Debtor's Existing Bank Accounts And Cash Management System.** To
 13 maximize the estate's value and reorganize efficiently, the Debtor must continue to use its
 14 existing bank accounts and cash management system. Maintaining the prepetition status of its
 15 cash management system allows the Debtor to continue the uninterrupted operation of its
 16 business. Essentially, the Debtor maintains a centralized cash management system, involving
 17 established banking relationships and accounts, to manage and control receipts and
 18 disbursements.

19 39. **Bank Accounts.** To efficiently consolidate its cash flow and fund its operations,
 20 the Debtor currently keeps three active bank accounts: its Depository Account, its Main Account,
 21 and its Disbursement Account (collectively, the "Accounts"). All of these Accounts are with US
 22 Bank.

23 40. **Cash Deposits.** Restaurant sales occur either by cash or credit card – checks are
 24 not accepted. At each restaurant, cash from sales is collected, stored in a safe at the restaurant,
 25 and deposited the following day into the Depository Account at the nearest US Bank branch
 26 location. Cash deposits are made by restaurant managers Monday through Friday. Each store's
 27 deposits are separately identified with the appropriate restaurant number and tracked by US Bank.
 28 The Debtor's corporate managers monitor and reconcile the sales from each location to the

1 deposits and notify the Debtor's operations management of any discrepancies. In addition, any
 2 miscellaneous cash received at corporate headquarters is also deposited into the Depository
 3 Account at the nearest US Bank branch location. Because the Depository account is a zero-
 4 balance account ("ZBA"), each night, US Bank automatically sweeps the funds out of the
 5 Depository Account and transfers them to the Main Account. The Main Account is not a ZBA.
 6 In the ordinary course of business, the Main Account's balance may approach – and even exceed
 7 – \$1 million.

8 41. Credit Card Deposits. All credit card sales are processed by Elavon, Inc., as
 9 merchant service provider, in accordance with that certain Payment Device Processing
 10 Agreement by and between Elavon, Inc. and the Debtor. With the exception of purchases made
 11 with American Express credit cards, Elavon remits all credit card payments directly into the
 12 Debtor's Main Account. For purchases made with American Express credit cards, American
 13 Express remits payments directly into the Debtor's Main Account. Typically, credit card
 14 payments are remitted to the Main Account within twenty-four hours, generally by direct
 15 payment or by wire. Like cash deposits, credit card deposits are separately identified with the
 16 appropriate restaurant number and tracked by US Bank.

17 42. Disbursements. Each week, the Debtor pays its vendor and other creditor
 18 obligations from the Disbursement Account. Payroll is funded bi-weekly through a reverse wire.
 19 Vendors and other creditors are paid by check (based on the specific terms negotiated with the
 20 Debtor). After reviewing the company's cash flow, checks are signed by the Debtor's Chief
 21 Executive Officer each Thursday, and mailed each Friday. Each day, US Bank pays the checks
 22 that are presented. Additionally, each day, the Debtor then transfers from the Main Account to
 23 the Disbursement Account, the exact dollar amount to cover the payments presented.

24 43. The Debtor's cash management system allows the Debtor to effectively and
 25 efficiently run its business. The Debtor believes that the success of its reorganization is best
 26 ensured by minimal interference with its ordinary day-to-day affairs, including its current cash
 27 management system, which is essential to its business. Disturbance of the Debtor's existing cash
 28 management system would disrupt the Debtor's ability to maximize the value of its assets for the

1 benefit of all of its creditors and employees.

2 44. The Debtor's Existing Business Forms. In the ordinary course of its business, the
 3 Debtor uses checks labeled "Fili Enterprises, Inc., d/b/a Daphne's Greek Café", stationery labeled
 4 "Daphne's Greek Café" and other business forms stamped with its name. Based on the nature
 5 and scope of the Debtor's business – and the many other parties with whom the Debtor transacts –
 6 altering or changing the Debtor's checks, stationary, and other business forms would needlessly
 7 affect the ease with which the Debtor conducts business. Although altering or changing these
 8 items is possible, significant time and expense would be required. The Debtor respectfully
 9 submits that printing new checks, stationary, and other business forms would engender confusion
 10 and create undue delay among its employees, customers and other third parties. Accordingly, the
 11 Debtor requests that the Court authorize the Debtor to continue to use its existing checks,
 12 stationary, and other business forms.

13 45. Allowing the Debtor to maintain the existing cash management system, bank
 14 accounts, and business forms best allow the Debtor to accomplish the objectives of a successful
 15 rehabilitation and creating maximum value for the estate. With these objectives in mind, the
 16 Court should allow the Debtor to maintain its existing cash management system, bank accounts,
 17 and business forms, despite the United States Trustee ("UST") Operating Requirements.

18 46. **First Day Motion by Debtor for Order (A) Authorizing Interim Use of Cash**
 19 **Collateral, (B) Granting Adequate Protection for Use of Prepetition Collateral, and (C)**

20 **Granting Related Relief:** The Debtor filed the Cash Collateral Motion because the Debtor has an
 21 immediate and ongoing need for use of cash collateral to maintain its business operations, which
 22 as described above contains 68 locations, a corporate office and a website. The Debtor must have
 23 access to cash collateral to make payments to vendors for postpetition goods, employees, rent,
 24 sales taxes and other pertinent, ordinary expenses for its business operations. The Debtor's
 25 expected use of cash collateral is fully set out in Exhibit "A." Any inability to fund operating
 26 costs on a postpetition basis will significantly and adversely impair the estate. It is critical to the
 27 success of the restructuring process that the Debtor be able to fund reasonable and necessary
 28 business operations.

1 47. **First Day Motion by Debtor for Order (A) Prohibiting Utility Providers from**
 2 **Altering, Refusing or Discontinuing Service, (B) Deeming Utility Companies Adequately**
 3 **Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate**
 4 **Assurance of Payment:** By this Motion (the “Utilities Motion”), the Debtor seeks an order from
 5 this Court approving procedures for providing its utility companies with adequate protection. To
 6 ensure the continued and uninterrupted provision of utility services (the “Utility Services”) to the
 7 Debtor’s restaurants and corporate office, the Debtor seeks entry of an order prohibiting utility
 8 companies (each, a “Utility Company”) from altering, refusing, or discontinuing any Utility
 9 Service.

10 48. The Debtor’s restaurants and corporate office receive one or more essential Utility
 11 Services from various Utility Companies, including but not limited to water, gas, electric,
 12 telephone, and garbage services. Attached to the Utilities Motion as Exhibit “A,” is a list of the
 13 Utility Companies and Debtor’s utility accounts (“Utility Accounts”). Not included on Exhibit
 14 “A,” however, are those Utility Accounts for which the Debtor will no longer require Utility
 15 Services.

16 49. The Debtor has over 50 accounts with Utility Companies. At this critical time,
 17 and given the nature of the Debtor’s business, uninterrupted Utility Services are essential to the
 18 ongoing operations of the Debtor’s business and to the preservation of value of the Debtor’s
 19 estate. Any interruption in the delivery of Utility Services, however brief, will irreparably disrupt
 20 the Debtor’s operations and its ability to reorganize as a going concern.

21 50. The Debtor has established a good payment history with virtually all of the Utility
 22 Companies, consistently making payments on a regular and timely basis. To the best of my
 23 knowledge, there are few, if any, defaults or arrearages of any significance with respect to the
 24 Debtor’s undisputed invoices for prepetition Utility Services, other than payment interruptions
 25 that may be caused by the commencement of this Case. The Debtor anticipates that it will pay all
 26 utility bills for postpetition Utility Services as billed and when due subject to the Debtor’s rights,
 27 if any, in the ordinary course, to contest, among other things, the amount of a bill or the services
 28 rendered.

1 51. Given the vital nature of the Utility Services and the critical importance of the
 2 continued and uninterrupted flow of Utility Services, but recognizing the Utility Companies' right
 3 to receive adequate assurance of payment, the Debtor will provide the Utility Companies (from
 4 which it seeks to continue to receive Utility Services), a deposit equal to one-half of the Debtor's
 5 November 2009 monthly invoice amount (an "Adequate Assurance Deposit").² Attached as
 6 Exhibit "B" to the Utilities Motion, is a chart which details the amount of each Adequate
 7 Assurance Deposit to be provided to the Debtor's Utility Companies.

8 52. The Debtor has specifically included in its budget amounts for payments to Utility
 9 Companies, including the payment of the Adequate Assurance Deposits.

10 53. Moreover, the Debtor believes that the establishment of certain procedures,
 11 specifically detailed in the Utilities Motion (the "Adequate Assurance Procedures"), in
 12 conjunction with the provision of the Adequate Assurance Deposits and the Debtor's ability to
 13 pay for Utility Services in the ordinary course ("Proposed Adequate Assurance"), constitutes
 14 adequate assurance of payment to the Utility Companies. Such Adequate Assurance Procedures
 15 provide that:

16 (a) If a Utility Company is not satisfied with the assurance of
 17 future payment provided by the Debtor, such Utility Company
 18 must, within 30 days of the entry date of the order granting this
 19 First Day Motion (the "Request Deadline") serve a written request
 20 (a "Request") so that it is actually received by the Request Deadline
 21 upon counsel for the Debtor, DLA Piper LLP (US), 550 S. Hope
 22 Street, Suite 2300, Los Angeles, California 90071-2678 (Attention:
 23 Bambi Clark), setting forth the location(s) for which Utility
 24 Services are provided, the account number(s) for such location(s),
 25 the outstanding balance for each account, a summary of the
 26 Debtor's payment history on each account, and an explanation of
 27 why the Adequate Assurance Deposit is not adequate assurance of
 28 future payment.

29 (b) Without further order of the Court, the Debtor, in its sole
 30 discretion, may, but is not required, to enter into agreements
 31 granting additional adequate assurance to a Utility Company timely
 32 serving a Request, if the Debtor determines such Request is
 33 reasonable.

34 (c) If the Debtor believes that a Request is unreasonable, then it
 35 shall, within 30 days after the Request Deadline, file a motion (the

27 2 The Adequate Assurance Deposits to be provided to the City of San Diego, Moulton Niguel Water District, and
 28 Southern California Water are equal to one-quarter of the Debtor's November 2009 monthly invoice amount. These
 three Utility Companies issue invoices to the Debtor every other month.

1 “Determination Motion”) pursuant to 11 U.S.C. § 366(c)(3) seeking
 2 an order that the Adequate Assurance Deposit, plus any additional
 3 consideration offered by the Debtor, in its discretion, constitutes
 4 adequate assurance of payment. Pending notice and a hearing on
 5 the Determination Motion, the Utility Company that is the subject
 6 of an unresolved Request may not alter, refuse, or discontinue any
 7 Utility Services to the Debtor, or otherwise discriminate against the
 8 Debtor.

9 (d) The Adequate Assurance Deposit shall be deemed adequate
 10 assurance of payment for any Utility Company that fails to timely
 11 make a Request.

12 54. The Debtor reserves the right to supplement the list of Utility Companies attached
 13 as Exhibit “B” to the Utilities Motion without further order of the Court, if a Utility Company has
 14 been omitted, mistakenly included, or commences providing Utility Services to the Debtor
 15 postpetition. To the extent the Debtor identifies additional Utility Companies, the Debtor will
 16 promptly file an amendment to the list of Utility Companies, as identified on Exhibit “B” to the
 17 Utilities Motion adding the name and other information of the newly-identified Utility Company,
 18 and promptly serve copies of the order (the “Utilities Order”) granting the Utilities Motion on
 19 such newly-identified Utility Companies (the “Supplemental Service”).

20 55. The Debtor will provide an Adequate Assurance Deposit for the newly-identified
 21 Utility Company within 30 days of the entry of the Utilities Order or on or before 30 days after
 22 the Supplemental Service, whichever is later. If the newly-identified Utility Company has not
 23 provided Utility Services to the Debtor prior to the Petition Date, then such Adequate Assurance
 24 Deposit will be equal to one-half of the Debtor’s expected monthly invoice amount for the Utility
 25 Services to be provided. The newly-identified Utility Company shall have 30 days from the date
 26 of the Supplemental Service to make a Request. If such Request is made, the Adequate
 27 Assurance Procedures, as detailed above, shall apply to this Court’s consideration and resolution
 28 of such Request.

29 56. The Debtor additionally requests that the Utilities Order provide that the Utility
 30 Companies must refund any Adequate Assurance Deposit to the Debtor within ten (10) business
 31 days of (x) the date the Debtor terminates the services of a Utility Company or (y) the date of
 32 entry of an order closing this Case, if not returned or applied earlier, whichever date is later.

1 57. The Debtor's Proposed Adequate Assurance, in conjunction with the Adequate
 2 Assurance Procedures, are not prejudicial to the rights of any Utility Company, and the
 3 importance of the continuation and uninterrupted flow of Utility Services cannot be understated.
 4 The relief requested by the Utilities Motion is necessary and in the best interests of the Debtor's
 5 estate and its creditors. Such relief ensures that the Debtor's business operations will not be
 6 disrupted, as well as provides the Utility Companies and the Debtor with an orderly, fair
 7 procedure for determining adequate assurance.

8 58. **First Day Motion by Debtor for Order: (1) Authorizing, but not Requiring,**
 9 **Payment of Pre-Petition (A) Wages, Salaries and Other Compensation; (B) Employee Benefits;**
 10 **(C) Reimbursable Expenses; and (D) Related Taxes; and (2) Authorizing and Directing**
 11 **Financial Institutions to Receive, Process, Honor, and Pay All Checks Presented for Payment:**
 12 By this Motion (the "Wage Motion"), the Debtor seeks an order (1) authorizing, but not
 13 requiring, payment of prepetition (A) wages, salaries, and other compensation; (B) employee
 14 benefits; (C) reimbursable expenses; and (D) related taxes; and (2) authorizing and directing
 15 financial institutions to receive, process, honor and pay all checks presented for payment.

16 59. **The Debtor's Employees.** As set forth above, the Debtor collectively employs a
 17 total of 1,030 individuals consisting of 132 full-time employees and a total of 898 part-time
 18 employees who contribute their services at the Debtor's restaurants and its corporate headquarters
 19 located in San Diego. The majority of those who are employed on a part-time basis work in one
 20 of the Debtor's restaurants. The Debtor's 141 full-time Employees hold the following types of
 21 positions:

Type of Employment	Number of Full Time Employees
Corporate	17
Regional Directors	2
Area Managers	6
General Managers	58

1	Restaurant Managers	49
2	Total:	132

3 60. The Debtor's Payroll Service. The Debtor utilizes a payroll service, Modern
 4 Business Associates ("MBA"), to process the payment of salary and wages (collectively, the
 5 "Wages") to the Debtor's Employees. In the normal course of their relationship with MBA,
 6 sufficient funds necessary for the payment of Wages for each pay period are wire transferred to
 7 MBA from the Debtor's payroll account with Bank of America just one day prior to payday.
 8 MBA then withdraws the amounts necessary to cover (a) the Employees' net wages (for both
 9 direct deposits and checks); and (b) payroll taxes, FICA and unemployment taxes (collectively,
 10 the "Employee Tax Deductions").

11 61. In addition, MBA ensures that appropriate funds are withheld from the
 12 Employees' paychecks, including, but not limited to, (a) employee contributions for health and
 13 disability related benefits; (b) employee contributions to 401(k) plans; and (c) legally ordered
 14 deductions such as wage garnishments and child support (collectively, the "Employee Non-Tax
 15 Deductions"). The Employee Tax Deductions and the Employee Non-Tax Deductions are
 16 collectively referred to herein as the "Employee Deductions". As of the Petition Date, all
 17 Employee Tax Deductions and Employee Non-Tax Deductions have been remitted to the
 18 appropriate third-parties.

19 62. Salary, Wages and Other Compensation. All of the Debtor's Employees are paid
 20 biweekly (*i.e.*, every two weeks) by way of checks or direct deposits. These Employees are either
 21 paid on a salary or hourly basis. The Debtor's last payroll was issued on December 31, 2009 and
 22 covered the period from December 14, 2009 through December 27, 2009. For salaried
 23 employees, approximately \$96,000.00 will cover the prepetition period of December 14, 2009
 24 through December 27, 2009. For hourly employees, approximately \$453,000.00 covered the
 25 prepetition period of December 14, 2009 through December 27, 2009. The total amount of
 26 Wages that were paid to the Employees on December 31, 2009 was approximately \$549,000.

27 63. As set forth above, the next payroll is expected to take place on January 15, 2010

1 (the “Next Payroll”) and will cover the period from December 28, 2009 through January 9, 2010
 2 and is expected to total approximately \$550,000. For salaried employees, approximately \$96,000.
 3 will cover the period from December 28, 2009 through January 9, 2010. For hourly employees,
 4 approximately \$454,000. will cover the prepetition period from December 28, 2009 through
 5 January 9, 2010. Thus, the Next Payroll will cover the entire prepetition period totaling
 6 \$550,000.00 (collectively, the “Prepetition Wages”). With the exception of my prepetition
 7 wages, none of the Employees will receive more than \$10,950 in Prepetition Wages.

8 64. Commissions. The Debtor has established two different types of sales incentive
 9 plans designed to reward optimum performance by either restaurant managers or area managers.
 10 Both programs have been designed to increase sales of each of the Debtor’s restaurants and
 11 improve profitability through proper execution of the Debtor’s standards. In general, under the
 12 “Monthly Incentive Bonus Plan”, all “general mangers” and “restaurant managers” who meet
 13 certain eligibility requirements and the minimum requirements for incentive payouts are paid a
 14 commission based on, among other things, actual sales according to a sales incentive schedule
 15 which is based on the restaurant’s performance. Likewise, under the “Monthly Incentive Bonus
 16 Plan” designed for area managers, all “area managers” who meet certain eligibility requirements
 17 and the minimum requirements for incentive payments receive commission based on a sales
 18 incentive schedule based on the area’s performance. The Debtor will owe approximately \$7,500
 19 in commissions as of the Petition Date. The Debtor seeks authority to continue honoring its sales
 20 incentive plans.

21 65. Employee Benefits. The Debtor has established a variety of benefit plans and
 22 programs designed to assist their Employees and their eligible dependents in meeting certain
 23 financial burdens, including, without limitation, medical, dental and vision insurance coverage,
 24 disability insurance, accidental and death and dismemberment, and life insurance (collectively,
 25 “Employee Benefits”), for which the Debtor makes certain contributions.

26 Health Related Benefits

28 66. Medical and Dental Plans. For full-time and part-time employees, the Debtor

1 provides basic medical insurance (standard HMO or PPO) through CIGNA and dental coverage
 2 through Principal. All premiums are paid one month in advance on a cost-sharing basis (with
 3 necessary adjustments made in the next billing period), as follows:

Tier	Debtor	Employee
Employee Only	65% - 75%	25% - 35%
Employee + Spouse	50% - 60%	40% - 50%
Employee + Child(ren)	50% - 60%	40% - 50%
Employee + Family	50% - 60%	40% - 50%

10 67. The Debtor's monthly average premium is approximately \$54,000.00 with an
 11 annual cost of approximately \$648,000.00. The Debtor withholds a pre-set amount from the
 12 Employees' Wages and subsequently submits payment to CBIZ Benefits & Insurance Services,
 13 Inc. ("CBIZ"), the Debtor's third-party carrier who administers the Debtor's medical and dental
 14 plans.

15 68. The Debtor is current on its monthly premiums for the prepetition period,
 16 including the Employees' withholdings portions. The next bill, which will cover medical and
 17 dental insurance premiums for the month of February 2010, is expected shortly after the Petition
 18 Date. The Debtor seeks authority to continue with their medical and dental insurance programs,
 19 which are both valuable components of the Debtor's Employee Benefits that the Debtor provides
 20 to its Employees.

21 69. Vision Plan. The Debtor offers vision insurance for all of its full-time
 22 Employees. The Debtor's monthly average premium for vision coverage is approximately
 23 \$1,000.00. Participating Employees are responsible for 100% of the costs through payroll
 24 deductions. The Debtor is current on its vision insurance premiums through January 2010. The
 25 next monthly premium will cover vision insurance for the month of February 2010 and is
 26 expected shortly after the Petition Date.

27 70. Life, Disability, Workers' Compensation and Other Benefits. The Debtor offers

1 group life insurance and accidental death and dismemberment (“AD&D”) insurance coverage to
 2 all of its employees at the restaurant support center (“RSC”), regional directors and area managers
 3 (collectively, the “Group Employees”), which are fully funded by the Debtor. With respect to the
 4 Debtor’s life insurance coverage, the Group Employees receive benefits equal to one times their
 5 base salary, not to exceed \$250,000. However, additional life insurance and AD&D coverage can
 6 be purchased by these Group Employees. The Debtor also offers long-term disability insurance
 7 to its Group Employees, with a minimum monthly benefit of \$100 and a maximum monthly
 8 benefit of \$6,000. The Debtor pays approximately \$12,000 annually for life insurance, AD&D
 9 and long-term disability insurance coverage described herein. The Debtor also offers voluntary
 10 life insurance and AD&D coverage to its general managers and regional managers (collectively,
 11 the “Managers”).

12 71. The Debtor has workers’ compensation insurance policies in place. For the
 13 Debtor’s California restaurant locations, the Debtor is a member of a self-insured group policy
 14 with California Restaurant Mutual Benefit Corporation. The Debtor owes approximately
 15 \$283,000.00 on a prepetition basis in annual workers’ compensation premiums for its California
 16 locations for the year 2010.

17 72. For the Debtor’s Arizona and Colorado locations, the Debtor is insured by
 18 Hartford Insurance. The Debtor will owe approximately \$11,000.00 through December 23, 2009
 19 in annual worker’s compensation premiums for the year 2010.

20 73. Lastly, premiums are paid directly to the state of Washington on a quarterly basis
 21 based on the Debtor’s payroll. The Debtor owes estimated quarterly payments of approximately
 22 \$2,400.00 for the prepetition period from October 1, 2009 through the Petition Date. The Debtor
 23 seeks authority to continue to provide the foregoing Employee Benefits and to honor associated
 24 obligations with respect thereto.

25 Paid Time Off

26 74. The Debtor has established certain paid time off policies for its Employees for the
 27 purpose of providing vacation related benefits. These Employees accrue vacation time on a
 28 biweekly basis in accordance with an accrual policy established by the Debtor. For all of the

1 Debtor's RSC staff, regional directors, area managers, general managers and restaurant managers,
 2 those who have provided service to the Debtor up to a period of five years are entitled to ten days
 3 of vacation per year — increasing as the length of the employee's service increases — up to a
 4 maximum of twenty days per year after ten years of service with the company. The accrual
 5 schedule is subject to a cap and once these employees reach their allowed cap, they stop accruing
 6 any additional vacation time until their balance decreases below the allowed cap. The Employees
 7 are paid out at termination or severance with the company for any unused vacation time only.

8 75. The Debtor's RSC staff also has the opportunity to earn paid "sick" days in
 9 accordance with an accrual schedule established by the Debtor. The aggregate obligation for the
 10 Debtor's "paid time off" policy as of the Petition Date is approximately \$215,000.00 for vacation
 11 pay.

12 401(k) Plan

13 76. The Debtor offers all eligible Employees the opportunity to participate in a 401(k)
 14 savings and retirement plan ("401(k) Plan"). In April 2009, the Debtor's 401(k) Plan changed
 15 from a safe harbor 401(k) plan to a non-safe harbor 401(k) plan. In order to qualify, each
 16 employee must attain the minimum age of 21 and have completed at least twelve months of
 17 service. Employees participating in this program may contribute up to the federal statutory cap
 18 per year.

19 77. The Debtor does not contribute any funds to the employee's 401(k) Plan. Instead,
 20 the Debtor deducts and withhold the Employees' 401(k) Plan contributions from the
 21 participating Employees' paychecks and issues a wire transfer of the withholdings to the
 22 appropriate third-party within ten days of the pay date. The average amount of biweekly deferrals
 23 of the Employees is approximately \$1,800. The Debtor believes that \$1,800.00 constitutes the
 24 total amount of any deducted but unremitted 401(k) Plan contributions outstanding as of the
 25 Petition Date.

26 78. Reimbursable Expenses. Eligible Employees may submit certain business-related
 27 expenses (the "Employee Expenses") to the Debtor's third-party administrator for reimbursement.
 28 An expense report is submitted to the Employees' supervisor for approval, and then sent to the

1 third-party administrator for payment. There are no reimbursable Employee Expenses issued out
 2 of the Debtor's payroll. As of the Petition Date, the Debtor estimates that it does not owe any
 3 Employee Expenses. The Debtor seeks authority to continue to pay any Employee Expenses in
 4 the ordinary course of business to its current Employees.

5 79. Withholding Taxes. Attendant to the payment of employee wages, salary,
 6 commissions and expenses is the Debtor's obligation to pay, among other things, federal, state
 7 and payroll taxes such as FICA, FUTA and state disability taxes (collectively, the "Employee Tax
 8 Deductions"). The Debtor utilizes the services of MBA to act as its third-party payroll service, to
 9 process all of its payroll obligations and to process and remit its Employee Tax Deductions. The
 10 Debtor issues a wire transfer to MBA in connection with the Debtor's payroll amounts and MBA
 11 fully remits the Employee Tax Deductions to the applicable taxing authorities after the
 12 disbursement of the funds to each of the Employees.

13 80. To the best of the Debtor's knowledge, the Debtor is current on all of the
 14 Employee Tax Deductions in connection with its prepetition payroll. The Employee Tax
 15 Deductions to be issued relating to the December 31, 2009 payroll was paid as required by wire
 16 transfer. The Debtor seeks authority to pay the Debtor's share of Employee Tax Deductions in
 17 connection with its Next Payroll.

18 81. It is critically important that the Debtor be permitted to pay their Employees
 19 certain prepetition wages, salaries, sick leave, vacation and other accrued yet unpaid wages and to
 20 honor existing Employee Benefits policies in the ordinary course of business. If the Debtor is not
 21 permitted to meet its payroll and pre-petition obligations, not only will the Debtor suffer
 22 tremendous hardship based on its inability to continue its business operations, the Debtor will
 23 undoubtedly suffer excessive turnover resulting in inadequate staffing and deterioration in
 24 employee morale causing irreparable harm to the estate and a material and adverse impact on the
 25 Debtor's ability to reorganize and preserve its going concern value and the value.

26 82. Similarly, the Debtor requires the requisite authority to continue to meet its
 27 Employee Benefits obligations to ensure that the Debtor continues to provide Employees with an
 28 important incentive to provide quality services to the Debtor during the postpetition period and to

1 avoid the devastation to employee morale. Employee benefits are essential in order for the
 2 Debtor to maintain its employees in a highly competitive market and employee satisfaction is
 3 critical to the Debtor's objective of maximizing the estate's value. In short, adequate and
 4 appropriate staffing is necessary to maintain the highest value for the Debtor's business and to
 5 maximize the value of its business operations.

6 83. In summary, the Debtor seeks authority, in its sole discretion:

- 7 a. To honor and pay, when due, all Prepetition Wages;
- 8 b. To pay the Debtor's share of applicable employment taxes in
 connection with such Prepetition Wages;
- 9 c. To continue providing Employees with their Employee Benefits
 10 and to pay, or otherwise honor, earned prepetition Employee Benefits;
- 11 d. To permit the Debtor and its Employees to utilize Paid Time Off in
 12 the ordinary course of business and to pay terminated employees up to the maximum statutory
 13 amount of \$10,950 for prepetition compensation;
- 14 e. To honor and pay, when due, all Employee Expenses; and
- 15 f. To make all Employee Deductions and to forward the Employee
 16 Deductions to the appropriate agency or third-party plan administrator(s).

17 84. In order for the Debtor to meet all of its prepetition obligations, the Debtor
 18 requires that all applicable banks and other financial institutions be authorized to receive, process,
 19 honor and pay all which are presented for payment and to honor any and all transfer requests
 20 related to the Debtor's Employee Obligations, whether such transfer requests were made prior to
 21 or after the Petition Date (and regardless of whether they were previously presented yet
 22 dishonored by the respective banks). As set forth in the Budget, the Debtor expects to have
 23 sufficient funds within which to pay all Employee Obligations, within the ordinary course of
 24 business. Lastly, checks (other than the Employee Obligations) will not be paid inadvertently or
 25 without justification.

26 85. **First Day Motion by Debtor for Order Pursuant to Sections 503(b) and**
 27 **507(a)(2) Confirming Grant of Administrative Expense Status to Undisputed Obligations**

1 **Arising from the Postpetition Delivery of Goods:** By this Motion (the “Vendor Motion”), and in
 2 order to obtain and ensure the timely delivery from their suppliers and vendors (collectively, the
 3 “Vendors”) of materials, supplies, goods, products and related items (collectively, the “Goods”),
 4 the Debtor seeks entry of an order pursuant to sections 503(b) and 507(a)(2) confirming
 5 administrative expense status to undisputed obligations arising from the postpetition delivery of
 6 Goods.

7 86. Specifically, the Debtor seeks entry of an order (1) confirming that Vendors will
 8 have administrative expense priority claims under Bankruptcy Code sections 503(b) and
 9 507(a)(2) for those undisputed obligations arising from the Debtor’s numerous prepetition
 10 purchase orders outstanding that have not yet been delivered and for which no payment has been
 11 made (the “Outstanding Orders”) as of the date of the Petition Date and for those undisputed
 12 obligations arising from all other postpetition shipments and deliveries of Goods by Vendors, and
 13 (2) authorizing, but not directing, the Debtor to pay, pursuant to its customary practice prior to the
 14 Petition Date and in the ordinary course of business, its undisputed obligations arising from the
 15 Outstanding Orders and its undisputed obligations arising from the postpetition shipments and
 16 deliveries of Goods by Vendors.

17 87. In the ordinary course, numerous Vendors provide the Debtor with a variety of
 18 Goods that are delivered to the Debtor’s restaurants. On the Petition Date, there will be a number
 19 of Outstanding Orders. The Debtor’s good faith estimate of the aggregate amount of invoices
 20 related to the Outstanding Orders is approximately \$250,000. These Goods are essential to the
 21 sustained operation of the Debtor’s business and will be necessary in the Debtor’s efforts to
 22 reorganize.

23 88. Vendors may be concerned that the delivery of such Goods will render the
 24 Vendors general unsecured creditors in respect of claims related to the Outstanding Orders. This
 25 concern may lead such Vendors to refuse to ship or transport Goods (or recall shipments of
 26 Goods) if this Court does not (i) confirm that all the *undisputed* obligations of the Debtor, arising
 27 from the Debtor’s postpetition receipt of Goods under the Outstanding Orders are entitled to
 28 administrative expense priority status under sections 503(b) and 507(a)(2) of the Bankruptcy

1 Code and (ii) authorize, but not direct, the Debtor to satisfy such obligations related to the
 2 Outstanding Orders in the ordinary course of business, subject to the limitations imposed by any
 3 orders of this Court and the prior rights of holders of security interests in such Goods or the
 4 proceeds of such Goods under the Debtor's proposed debtor-in-possession financing agreements
 5 and prepetition financing agreements, to the extent of such interests.

6 89. Absent the relief requested by the Vendor Motion, the Debtor would be required
 7 to expend substantial time and resources convincing Vendors of the Debtor's authority to make
 8 certain payments, reissuing Outstanding Orders, and/or establishing the Debtor's right to retain
 9 Goods. The attendant disruption could significantly hinder the Debtor's operations and without
 10 the Goods, the Debtor's business would deteriorate at the expense of all creditors of the estate.
 11 The Debtor has a critical need to maintain an uninterrupted supply of Goods from Vendors and
 12 the granting of an order confirming administrative expense status for Vendors with claims under
 13 the Outstanding Orders (as well as for all other Goods shipped and delivered to the Debtor
 14 postpetition), directly addresses this critical need.

15 90. Therefore, the Debtor believes that an order confirming that Vendors will have
 16 administrative expense priority claims for undisputed obligations arising from the Debtor's
 17 receipt of Goods under the Outstanding Orders (as well as for all other Goods shipped and
 18 delivered to the Debtor postpetition) is in the best interests of the estate.

19 91. **First Day Motion by Debtor for Order Authorizing, but not Requiring, Debtor**
 20 **to Pay Interim Compensation to Insiders:** By this Motion ("Insider Compensation Motion"),
 21 the Debtor is requesting that the Court enter an order authorizing, but not requiring, the Debtor to
 22 pay interim compensation to the Debtor's management team which includes George Katakalidis,
 23 Anne Geiling, and Ricardo Camberos ("Insiders"). Specifically the Debtor is requesting that the
 24 Court authorize it to compensate the Insiders the same salaries and benefits paid to them
 25 prepetition on an interim basis for sixty (60) days.

26 92. The retention of the Insiders is not only critical to the success of the Debtor's
 27 reorganization efforts, it is also critical to the continued operation of the Debtor's business
 28 operations and oversight. If the Debtor is not permitted to compensate the Insiders in the

1 ordinary course of business, then the Insiders will be forced to seek employment elsewhere,
 2 resulting in a significant negative impact on the Debtor's ability to reorganize during a critical
 3 point in the process. The Insiders comprise the Debtor's key team who fully know and
 4 understand the Debtor's business. In addition, the Budget illustrates that there are sufficient
 5 funds to pay the Insiders. Specific information related to each of the Insiders and their position
 6 with Daphne's is set forth in the declarations of the Insiders attached to the Insider
 7 Compensation Motion.

8 93. **First Day Motion by Debtor for Order (A) Authorizing the Debtor to Pay**
 9 **Prepetition Insurance Premiums; and (B) Directing Banks and Financial Institutions to**
 10 **Honor and Process Checks and Transfers Related to the Payment of These Obligations:** By
 11 this Motion (the "Insurance Payment Motion"), the Debtor seeks an order authorizing the Debtor
 12 to pay its prepetition insurance premiums. Prior to the petition date ("Petition Date"), the Debtor
 13 obtained and paid for a variety of insurance coverage in the ordinary course of business. In some
 14 cases, the insurance policies were required as a matter of law. In other cases, the Debtor obtained
 15 the insurance either because its lenders and landlords required, or based on prudent business
 16 practices. Regardless, continued maintenance of the insurance policies is essential to the Debtor's
 17 reorganization.

18 94. A majority of the payments associated with these various insurance policies were
 19 maintained and paid prior to the Petition Date. In some instances, however, the insurance
 20 obligations were incurred prepetition and have not yet been paid (the "Insurance Obligations").
 21 These incurred, but unpaid Insurance Obligations are set forth on Exhibit "B" attached to the
 22 Insurance Payment Motion.

23 95. The Debtor is obligated, both by federal statute, and the UST Operating
 24 Requirements to pay the Insurance Obligations.³ If the Debtor fails to pay the Insurance
 25 Obligations, the Debtor will no longer be authorized to continue with its business operations, or
 26 this case could be dismissed. The Debtor respectfully submits nothing is more catastrophic to a
 27 chapter 11 reorganization process than being legally prohibited from operating or having its case

28 ³ In some cases, state law may also place further requirements on the Debtor to carry insurance coverage.

1 dismissed.

2 96. Keeping in mind that the objective of this Debtor's chapter 11 proceeding is to
 3 maximize value for the benefit of the estate and its creditors, it is vitally important that the Court
 4 (1) authorize (but not direct) the Debtor to, in its sole discretion, pay prepetition insurance
 5 premiums, and (2) direct banks and financial institutions to honor and process checks and
 6 transfers related to these Insurance Obligations.

7 97. As described above, the debtor is obligated to pay the Insurance Obligations.
 8 Regardless, paying the Insurance Obligations is in the Debtor's best interest and serves the
 9 chapter 11 objectives of protecting the estate's value and rehabilitating the Debtor. Indeed, any
 10 delay in paying the Insurance Obligations will be detrimental to the Debtor and its reorganization
 11 efforts. For these reasons, the Debtor requests that the Court direct the Debtor's banks and
 12 financial institutions to honor and process checks and transfers related to the payment of
 13 Insurance Obligations.

14 98. **First Day Motion By Debtor For Order Authorizing The Debtor To Honor**
 15 **Certain Prepetition Obligations To Customers And To Otherwise Continue Customer**
 16 **Programs And Practices:** By this motion (the "Customer Programs Motion"), the Debtor seeks
 17 an order from this Court authorizing it to honor certain prepetition obligations to customers and to
 18 otherwise continue customer programs and practices as set forth below.

19 99. Prior to the Petition Date, the Debtor had in place certain marketing, sales, and
 20 promotional programs and practices, designed to not only develop, but to sustain positive
 21 reputations and competitive positions for their restaurants (collectively, the "Customer
 22 Programs"). Each month, tens of thousands of customers participate in the Customer Programs at
 23 the Debtor's restaurants. The Debtor's Customer Programs include the following:

- 24 a. **Gift Cards:** Like many retailers – including the restaurants with which the Debtor
 competes – the Debtor has a gift card program. Under this program, a customer
 can purchase a gift card in various amounts. The customer may then use these
 "loaded" gift cards at some future time. As of December 23, 2009, approximately
 \$284,770 in value remained outstanding on customer gift cards.
- 25 b. **"Pita Points" Customer Rewards Program:** The Debtor runs a customer rewards

1 program known as the “Pita Points” program. Under the Pita Points program,
 2 customers enroll by providing basic personal information (e.g., name, phone
 3 number, birth date), which is entered into a database. Each Pita Points member
 4 receives 1 point for every \$1 spent in one of the Debtor’s restaurants. When a
 5 Pita Points member accrues 200 points, that member’s account is given a \$10
 6 credit, which is applied to the member’s next transaction. As of December 23,
 7 2009, the Debtor estimates that there were approximately 70,000 members of the
 8 Pita Points program. As of January 6, 2010, the value of \$10 Pita Points awards
 9 is approximately \$23,080/month or \$276,960 on an annualized basis. The cost of
 10 designing and producing materials to support the Pita Points program is
 11 approximately \$5,000/year.

- 12 c. Coupon Offers: The Debtor’s coupons fall into two main categories: ongoing
 coupons and promotional coupons. Ongoing coupons are used by the local
 restaurant marketing programs and promotional coupons are conducted at the
 corporate level (e.g., direct mailing efforts). Approximately 8% of the Debtor’s
 customers use ongoing coupons. On a monthly basis, approximately 24,000
 coupons are redeemed for customer savings of approximately \$40,000. A direct
 mail “booklet” is planned to hit the market the week of January 11, 2010. Based
 on past data, the Debtor expects that approximately 5,575 customers per week
 (i.e., approximately 1.5% of its clientele) will redeem promotional coupons from
 this direct mail booklet. As of January 6, 2010, the value of ongoing coupons is
 approximately \$39,622/month or \$475,464 on an annualized basis. The annual
 cost of the e-mail marketing platform for the coupon programs is \$33,000. The
 annual cost of designing and producing materials and coupons related to local
 store marketing programs is \$35,000. The annual cost of media which include
 coupons (e.g., by newsprint, direct mail) is \$348,000.
- 13 d. Big Fat Greek Fundraiser Program: Under the Debtor’s Big Fat Greek Fundraiser
 Program, local non-profit organizations and charities schedule a “fundraiser”
 night at one of the Debtor’s restaurants. The local non-profit organization or
 charity organization then promotes the event with flyers. Supporters of the non-
 profit organization or charity bring the flyers to the Debtor’s chosen restaurant
 location on the night of the event. For each flyer presented, the Debtor donates
 20% of the pre-tax sale price to the non-profit organization or charity. For the
 first five months of 2010, the Debtor has scheduled 35 fundraisers. Based on past
 data, the Debtor estimates an approximate cash donation of \$7,500 for 2010.
- 14 e. In-home Delivery: The Debtor has advertised – and maintains – a program under
 which free delivery is made on catering orders totaling over \$100.

15 100. The Debtor seeks authority, in its discretion, to continue to honor the Customer
 16 Programs in the ordinary course of business. If the Court authorizes the Debtor to maintain the
 17 Customer Programs, the Debtor will more efficiently maximize the value of the estate and
 18 successfully rehabilitate. The Debtor developed its Customer Programs, in the ordinary course of
 19 business, in response to the competitive nature of its industry and based on the sound business
 20

1 judgment of its professionals and advisors. The Customer Programs not only engender goodwill
 2 between the Debtor and its customers, but they attract more customers.

3 101. Each month, tens of thousands of customers participate in the Customer Programs
 4 at the Debtor's restaurants. If the Debtor is not authorized to continue its Customer Programs, the
 5 Debtor will have more difficulty attracting new customers and maintaining existing ones. The
 6 cash flow the Debtor's business operation generates is one of the most important, if not the most
 7 important element of the Debtor's reorganization. Interfering with this cash flow by
 8 discontinuing the Customer Programs could jeopardize the Debtor's reorganization and will have
 9 a severe detrimental impact on the Debtor maximizing the estate's value. Accordingly, the Court
 10 should authorize (but not direct) the Debtor to, in its sole discretion, honor prepetition obligations
 11 to customers arising under the Customer Programs and otherwise continue the Customer
 12 Programs.

13 102. **Motion by Debtor for Entry of Final Order Pursuant to Sections 105, 361, 362,**
 14 **364(c) and 364(d) (A) Authorizing the Debtor to Incur Postpetition Financing on a Secured**
 15 **Basis, (B) Granting Adequate Protection, and (C) Modifying the Automatic Stay:** By the
 16 motion ("DIP Financing Motion"), the Debtor is seeking to obtain authorization to obtain post-
 17 petition financing ("DIP Financing") from GPG Capital LLC ("Postpetition Lender"). The
 18 Debtor is seeking the relief sought by the DIP Financing Motion on regular notice.

19 103. The Debtor requires DIP Financing to ensure it maintains sufficient liquidity to
 20 consistently meet the obligations of operating its restaurant business. Subject to court approval,
 21 Postpetition Lender has agreed to provide the Debtor with a \$1,000,000 revolving credit facility
 22 on a senior secured super-priority basis. While the Debtor's projected cash flow projects that it
 23 will be able to meet obligations without additional funds for at least several weeks, the Debtor's
 24 analysis shows that at some point during this chapter 11 case, funds from operations may be
 25 insufficient. The proposed DIP Financing will be available to the Debtor on a revolving basis to
 26 cover cash shortfalls, if and when there are shortfalls. Funds will not be drawn – and
 27 accordingly, the estate will not be obligated to pay interest – unless and until there is a need.

28 104. The DIP Financing will preserve the value of the Debtor's operations to allow the

1 Debtor time to file and confirm a plan of reorganization. In addition, postpetition financing is
 2 necessary to pay the administrative costs which will arise in connection with this Case. Due to
 3 the volatility in the cash generated from the Debtor's business based on the seasonal dips inherent
 4 in the restaurant industry, and the Debtor's historical access to a line of credit from Bank of
 5 America which has been cut off, the Debtor cannot expect its projected cash collections to fund
 6 its operating needs through the its exit from bankruptcy without having DIP Financing that can be
 7 accessed if necessary. Equally important is the sense of confidence that the financing will instill
 8 in suppliers, customers and employees of the Debtor. Any failure of the Debtor's suppliers and
 9 employees to extend credit and services at this time could have a deeply negative impact on
 10 Debtor's ability to conduct a successful reorganization.

11 105. Consequently, a need exists for the Debtor to obtain financing, in order to assure
 12 the orderly administration of the estate. Without such financing, the Debtor may be unable to
 13 timely and consistently pay payroll and payroll expenses, rent, utility charges, general overhead
 14 and otherwise expend funds necessary to continue its business and operations. In addition,
 15 without the DIP Financing, the Debtor will be unable to absorb the administrative costs inherent
 16 in any Chapter 11 case. Without the additional available funding from the DIP Financing, the
 17 Debtor will be unable to meet its cash needs as it attempts to reorganize. A forced liquidation of
 18 the Debtor would result in only a benefit to Bank of America, however, even a forced liquidation
 19 would be insufficient to satisfy Bank of America's claim. The only hope of maximizing recovery
 20 for creditors is the maintenance of Debtor as a going concern. This can only be accomplished
 21 through the Debtor's access to additional cash through the DIP Financing.

22 106. Prior to the Petition Date, the Debtor and CRG actively engaged in the pursuit of
 23 debtor-in-possession financing. The Debtor has spent a considerable amount of time discussing
 24 DIP financing and facilitated due diligence efforts with a number of conventional lenders. After
 25 extensive efforts, the best DIP financing proposal the Debtor received is a proposal from GPG
 26 Capital LLC to borrow up to \$1 million on a secured basis in accordance with the terms of the
 27 Debtor in Possession Loan and Security Agreement attached to the DIP Financing Motion as
 28 Exhibit "A" (together with any ancillary documents, the "DIP Financing Documents"). As is

1 typical in a Chapter 11 bankruptcy case in this economy, no lender is willing to provide the
 2 Debtor with needed DIP financing on an unsecured basis.

3 107. The Court and creditors are requested to review the proposed DIP Financing
 4 Order (a copy of which is attached to the DIP Financing Motion as Exhibit "B")⁴ in order to
 5 become familiar with the specific terms. The material provisions of the proposed DIP Financing
 6 are summarized as follows and set forth in the following sections of the DIP Financing
 7 Documents

8 **Borrower:** Fili Enterprises, Inc. (d/b/a Daphne's Greek Café), a California
 9 corporation ("Borrower"), as the debtor-in-possession in bankruptcy case
 10 [10-bk-00324-PB] (the "Case") under Chapter 11 of Title 11, United
 11 States Code (the "Bankruptcy Code") filed in the Bankruptcy Court for
 12 the Southern District of California (the "Bankruptcy Court").

13 **Lender:** GPG Capital, a California Limited Liability Company ("Lender").

14 **Facility:** Lender shall provide to Borrower a debtor-in-possession credit facility
 15 (the "DIP Facility"), in an amount of up to \$1,000,000.

16 **Availability:** Loans under the DIP Facility may be made on a revolving basis up to the
 17 full amount of the DIP Facility.

18 **Purpose:** To fund general working capital in the ordinary course of business and to
 19 pay ordinary operating costs and expenses of the Obligated Parties during
 20 the term of the DIP Facility, to the extent permitted by the Bankruptcy
 21 Code or the Bankruptcy Court.

22 **Closing Date:** Not later than January __, 2010 (the "Closing Date"), or as otherwise
 23 agreed.

24 **Maturity:** The DIP Facility will terminate and all amounts outstanding thereunder
 25 shall be due and payable (unless accelerated earlier following an Event of
 26 Default) on the earliest of (i) July 31, 2010 (the "Maturity Date"), subject
 27 to extension of such Maturity Date upon terms and conditions to be
 28 agreed upon by Lender, (ii) the date of entry of an Order confirming any
 Plan of Reorganization in the Case acceptable to Lender ("Plan"), or (iii)
 the conversion of the Case to a case under Chapter 7 of the Bankruptcy
 Code.

29 **Interest Rate:** Advances outstanding under the DIP Facility shall bear interest at 14.0%.
 30 Interest will be payable monthly in arrears and calculated on the basis of
 31 a 360-day year and actual days elapsed.

32 **Default Rate:** During the continuance of an Event of Default (as defined below), all
 33 outstanding obligations under the DIP Facility shall bear interest at 2.0%
 34 above the otherwise applicable rate.

28 ⁴ All capitalized terms used but not defined have the meaning ascribed to them in the DIP Financing Order.

1 Fees: Lender shall receive a commitment fee in the amount equal to 5.0% of
 2 the DIP Facility commitment. Such fee shall be deemed fully earned and
 3 paid upon the disbursement of the DIP Facility.

4 Borrower shall also pay to Lender from and after the date of the final
 5 order is entered, a non-refundable unused commitment fee of 0.50% per
 6 annum of the daily average unused portion of the DIP Facility, payable
 7 monthly in arrears and on the Maturity Date.

8 Collateral and Lien
 9 Priority: All obligations of Borrower under the DIP Facility shall be: (a) entitled to
 10 super-priority administrative expense claim status pursuant to Section
 11 364(c)(1) of the Bankruptcy Code in the Case, subject only to the
 12 payment of fees pursuant to 28 U.S.C. § 1930 (the “Carve-Out
 13 Expenses”), and (b) secured pursuant to Sections 364(c)(2), (c)(3) and (d)
 14 of the Bankruptcy Code by a security interest in and lien on all now
 15 owned or hereafter acquired property and assets of Borrower, both
 16 tangible and intangible and real and personal, and the proceeds thereof
 17 (the “Collateral”). The security interests in and liens on the
 18 aforementioned assets of Borrower shall be first priority, senior secured
 19 liens not subject to subordination, but subject to the Carve-Out Expenses.

20 All borrowings by Borrower, all reimbursement obligations with respect
 21 to all costs, fees and expenses of the Investors, and all other obligations
 22 owed to Lender (collectively, the “Obligations”) shall be secured as
 23 described above and charged to the loan account to be established under
 24 the DIP Facility.

25 Repayment: All Obligations shall be payable upon the Maturity Date. Interest shall
 26 be payable as specified under “Interest Rate” and “Default Rate” above.
 27 Fees shall be payable as specified under “Fees” above.

28 Prepayment: The DIP Facility may be repaid at any time in whole or in part without
 29 premium or penalty.

30 Covenants: Borrower shall not make any capital expenditure in excess of \$100,000
 31 without Lender approval. In addition, there shall be other customary
 32 covenants (both positive and negative) which are customary in facilities
 33 of this nature.

34 Defaults: Usual events of default, including, but not limited to, payment, cross-
 35 default, violation of covenants, breach of representations or warranties,
 36 judgments, and other events of default which are customary in facilities
 37 of this nature.

38 In addition, an Event of Default shall occur if: (i) (A) (1) the Case shall
 39 be dismissed or converted to a Chapter 7 case, (2) a Chapter 11 trustee or
 40 an examiner with enlarged powers shall be appointed in the Case, or (3)
 41 any other superpriority administrative expense claim which is senior to or
 42 on pari passu with Lender’s claims shall be granted; (B) a Plan shall be
 43 confirmed in the Case which does not provide for termination of the
 44 commitment under the DIP Facility and payment in full in cash of
 45 Borrower’s obligations thereunder on the effective date of the Plan; or an
 46 order shall be entered which dismisses the Case and which order does not
 47 provide for termination of the DIP Facility and payment in full in cash of
 48 all obligations thereunder; (C) Borrower shall take any action, including
 49 the filing of an application, in support of any of the foregoing or any

1 person other than Borrower shall do so and such application is not
 2 contested in good faith by Borrower and the relief requested is granted in
 3 an order that is not stayed pending appeal; (ii) the Bankruptcy Court shall
 4 enter an order granting relief from the automatic stay to the holder of any
 5 security interest in any asset of Borrower having a book value in an
 6 amount equal to or exceeding an amount to be agreed upon; and (iii) such
 7 other similar Events of Default as are usual and customary in DIP credit
 8 facilities.

9 Expenses: Borrower shall reimburse Lender for all reasonable fees and expenses
 10 (the "Expenses") incurred by or on behalf of Lender in connection with
 11 the negotiation, preparation, execution and delivery of this term sheet and
 12 the transactions contemplated hereby.

13 Governing Law: The definitive DIP Facility documentation will be governed by California
 14 Law, subject to applicable bankruptcy law and each of the parties thereto
 15 shall waive its right to a trial by jury.

16 Indemnification Borrower shall indemnify and hold harmless Lender and its assignees,
 17 affiliates and directors, officers, employees, and agents (each an
 18 "Indemnified Party") from and against any and all losses, claims,
 19 damages, liabilities, or other expenses to which such Indemnified Party
 20 may become subject, insofar as such losses, claims, damages, liabilities
 21 (or actions or other proceedings commenced or threatened in respect
 22 thereof), or other expenses arise out of or in any way relate to or result
 23 from, this term sheet or the transactions contemplated herein, or in any
 24 way arise from any use or intended use thereof; provided, that upon the
 25 execution of the DIP Facility documentation, the indemnification
 26 provisions contained in such agreements shall, except as otherwise
 27 provided therein, supersede the indemnification provisions contained
 28 herein with respect to indemnification obligations for the transaction to
 29 which such agreement relates. Borrower further agrees to reimburse each
 30 Indemnified Party for any legal or other expenses incurred in connection
 31 with investigating, defending or participating in any such loss, claim,
 32 damage, liability or action or other proceeding (whether or not such
 33 Indemnified Party is a party to any action or proceeding out of which
 34 indemnified expenses arise). Notwithstanding the foregoing, all
 35 expenses, losses, claims, damages, and liabilities that are finally
 36 determined in a non-appealable decision of a court of competent
 37 jurisdiction to have resulted solely from the gross negligence or willful
 38 misconduct of the Indemnified Party shall be excluded from Borrower's
 39 indemnification and reimbursement obligations hereunder.

40 108. The Debtor has exercised sound business judgment in determining that a
 41 postpetition credit facility is necessary and appropriate and has satisfied the legal prerequisites to
 42 enter into the financing pursuant to the terms of the DIP Financing Order. As discussed above, in
 43 the ordinary course of business, the Debtor historically had access to outside working capital from
 44 the same sources as the proposed DIP Facility.

1 Bank of America in order to operate notwithstanding the volatility of the restaurant industry.
2 Now that Bank of America has cut off access to the credit facility, the Debtor has been unable to
3 maintain its required liquidity to sustain profitable operations in today's economy, and certainly
4 not with the added costs and uncertainty related to its chapter 11 case. Accordingly, the terms of
5 the DIP Financing are fair and reasonable and are in the best interests of the Debtor's estate. The
6 Debtor believes that the interest rate, fees and expenses provided for in the DIP Financing are
7 within market parameters and that those terms were negotiated in good faith and are favorable to
8 the estate.

9

10 I declare under penalty of perjury of the laws of the United States of America that the
11 foregoing is true and correct.

12 Executed on this 11 day of January, 2010, in San Diego, California.

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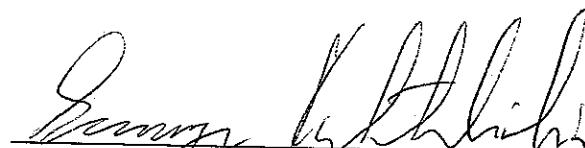
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George Katakalidis
Chief Executive Officer
Fili Enterprises, Inc.

EXHIBIT “A”

	January			February				March				April				
	1/17/10	1/24/10	1/31/10	2/7/10	2/14/10	2/21/10	2/28/10	3/7/10	3/14/10	3/21/10	3/28/10	4/4/10	4/11/10	4/18/10	4/25/10	
	Operating															
Cash Receipts																
Bank Deposits	882,361	855,674	785,942	777,788	748,498	722,824	763,455	718,350	737,497	729,623	864,885	867,510	747,695	757,608	772,750	
Vendor Rebate (Pepsi/USF)	882,361	855,674	785,942	777,788	748,498	722,824	763,455	718,350	737,497	729,623	864,885	867,510	747,695	757,608	772,750	
Disbursements																
Other/Prepaid	2,000	24,000	10,233	5,000	4,000	32,000	2,000	7,000	2,000	22,000	4,000	5,000	2,000	24,000	2,000	
Marketing						12,646	2,000	6,247	13,500		38,500	3,000	2,000	19,000	3,000	25,000
401K - Employee/er	3,000		3,000		3,000					3,000		3,000		3,000		3,000
Vendor Payments - Product	240,047	246,752	239,289	219,789	217,508	209,317	202,138	213,500	200,887	206,241	204,039	241,865	242,599	209,093	211,865	
Vendor Payments - Other Period Vendors	42,103	6,954	12,103	66,985	41,985	6,836	11,985	69,494	44,494	9,345	14,494	69,494	41,985	6,836	11,985	
Rent/CAMs	-	-	591,822	-	-			592,826	-	-		602,215	-	-	-	
Utilities					61,023	31,058	30,339	28,822	37,487	38,609	47,795	15,536	34,318	43,104	22,348	
Capital Maintenance	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	
Insurance - WC and Commercial	21,625	-	-	10,000	21,625	-	-	15,000	21,625	-	-	26,000	21,625	-	-	
Payroll and Taxes	550,000	-	513,000	-	499,000	-	451,000	-	454,000	-	447,000	-	421,000	-	454,000	
Employee Benefits (Med, Dent,)	53,973				53,973					53,973				53,973		
Sales Taxes	-	17,000	326,721	-	-	17,000	257,534	-	-	17,000	223,345	-	-	-	17,000	
Merchant fees/Bank Fees	-	-	-	49,161	-	-	-	43,038	-	-	-	41,817	-	-	-	
Disbursements - Operations	859,775	349,679	1,697,168	351,935	861,788	353,185	965,243	984,180	761,493	389,668	944,673	1,007,928	783,528	344,006	745,199	
Net Cash flow From Operations	22,586	505,995	(911,226)	425,853	(113,290)	369,640	(201,788)	(265,830)	(23,996)	339,955	(79,789)	(140,418)	(35,832)	413,603	27,552	
Cumulative Cash Flow	22,586	528,581	(382,645)	43,208	(70,082)	299,558	97,769	(168,060)	(192,056)	147,899	68,111	(72,307)	(108,140)	305,463	333,014	
Non - Operating																
Cash Receipts																
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Disbursements																
Utility Deposits			140,000													
PACA Claims			122,734													
Consultant - Accounting (Retainer and Exp)	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	8075	
Retainer/Fees - Retail Resource Group				10,000				10,000				10,000				
Legal, Consulting, Lenders and Committee			50,000			280,000			130,000				130,000			
Disbursements - Non-Operating	58,075	8,075	8,075	280,809	288,075	8,075	8,075	18,075	138,075	8,075	8,075	18,075	8,075	138,075	8,075	
Net Cash flow From Non-Operating	(58,075)	(8,075)	(8,075)	(280,809)	(288,075)	(8,075)	(8,075)	(18,075)	(138,075)	(8,075)	(8,075)	(18,075)	(8,075)	(138,075)	(8,075)	
Cumulative Cash Flow	(58,075)	(66,150)	(74,225)	(355,034)	(643,109)	(651,184)	(659,259)	(677,334)	(815,409)	(823,484)	(831,559)	(849,634)	(857,709)	(995,784)	(1,003,859)	
Total Net Cash Flow	(35,489)	497,920	(919,301)	145,044	(401,365)	361,565	(209,863)	(283,905)	(162,071)	331,880	(87,864)	(158,493)	(43,907)	275,528	19,477	
Cumulative Total Net Cash Flow	(35,489)	462,431	(456,870)	(311,826)	(713,191)	(351,627)	(561,490)	(845,395)	(1,007,465)	(675,585)	(763,449)	(921,942)	(965,849)	(690,321)	(670,845)	
Summary of Cash Activity																
Beginning Cash	1,034,397	998,908	1,496,828	577,527	722,571	321,206	682,770	472,907	189,002	26,931	358,812	270,948	112,455	68,548	344,076	
Total Net Cash Flow	(35,489)	497,920	(919,301)	145,044	(401,365)	361,565	(209,863)	(283,905)	(162,071)	331,880	(87,864)	(158,493)	(43,907)	275,528	19,477	
Ending Cash	998,908	1,496,828	577,527	722,571	321,206	682,770	472,907	189,002	26,931	358,812	270,948	112,455	68,548	344,076	363,552	